

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.3666 of 2006

DATE OF ORDER: 30.1.2007

Sarwan Singh

...Petitioner(s)

Versus

Surjit Singh and Another

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Sunil Chadha, Advocate.

Mr. C.B. Goel, Advocate.

M.M. AGGARWAL,J

This is petition filed by the plaintiff against order dated 11.5.2006 passed by Additional Civil Judge(Sr.Divn.), Ludhiana whereby an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the defendants was allowed and the dispute was referred to the Arbitration.

The facts of the case are that Sarvan Singh, present petitioner had filed suit for declaration that he was owner in possession of portion measuring 251-2/3 sq. yards which was one third of Plot No.704 Industrial Area B, Ludhiana. This was on the basis of agreement of partition dated

22.12.2000 and of the sale deed dated 14.12.2004 executed by defendant No.1 in favour of defendant No.2, which was registered on 30.12.2004. In that suit, defendants had filed an application that as per the terms of the partnership deed, the matter in dispute should be referred to the Arbitrators.

The property was admittedly that of firm M/s Singh Mechanical Works . Surjit Singh, Sarvan and Charanjit Kaur were partners of that firm. As per clause 13, all disputes arising between the partners with regard to firm affairs were to be settled through Arbitrator as far as possible. All other matters were to be governed by the provisions of Indian Partnership Act,1932.

On behalf of the petitioner, it was argued that the petitioner and Surjit Singh defendant No.1 and heirs of Charanjit Kaur the 3rd partner had executed partition deed on 22.12.2000 vide which specific portion of the plot in question had been allocated to each of the partner. It was argued that the firm is not doing any business for the last many years and filing the suit regarding the portion of the plot does not touch the affairs of the firm. It is regarding property only whereas on behalf of the respondent, it was argued that the firm was not still dissolved and dispute being in respect of property of the firm were referable to Arbitrator. It was argued from para No.2 of the plaint itself that partnership deed has been admitted.

Counsel for the respondent has shown earlier partnership deed also executed on 13.1.1983 in which Clause 14 was to the effect that in case of any controversy, all claims relating to this part of agreement or any breach in respect thereof would be subject to arbitration. However, in partnership deed of 1992, the word used is “firm affairs”.

When all the parties to this partnership deed are stated to have

executed further agreement of partition of the immovable property of the firm, dispute regarding this property cannot be called to be dispute of the affairs of the firm. The dispute regarding affair of the firm will be of the day to day running business and control etc.

Under these circumstances, dispute between the parties regarding plot in question was not referable to the Arbitrator. As such, petition is accepted. Order dated 11.5.2006 passed by Additional Civil Judge(Sr.Divn.), Ludhiana is set aside.

Let suit proceed in accordance with law.

January 30, 2007
manoj

(M.M. AGGARWAL)
JUDGE